HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G.V. SEETHAPATHY

W.P.13941 of 2006
and W.P.M.P.No.750 of 2005

Between:

Smt. Akula Vijayalaxmi. … Petitioner.

and

1. Punjab and Sindh Bank represented
by its Chief Manager, M.G. Road Branch
Secunderabad.

2. Shri Bhaskar Polyplast represented by its
Proprietor A. Yugandhar, 47/C, I.D.A.
Phase-I, Cherlapally, Hyderabad.

… Respondents

:JUDGMENT:

Counsel for the petitioner-applicant : Sri B. Krishna Mohan.

Counsel for respondent No.1 : Sri Deepak Bhattacharjee.

Counsel for respondent No.2 : Sri Girikrishna.

3rd July, 2006

Per G.S. Singhvi, CJ

The petitioner who mortgaged her residential house bearing No. 3-2-35, Revenue Ward No.1, Municipal Ward No.1/3, Revenue Survey No. 40/1A, 1/A, Rama Raja Nagar, Vidyadharpuram, Vijayawada for securing financial assistance to her son Sri A. Yugandhar from Punjab and Sindh Bank (for short 'the Bank') for doing business in Plastic Scrap, Pipes and Granules has invoked the jurisdiction of this Court for quashing the proceedings of Criminal Miscellaneous Petition No.6420 of 2005 pending in the Court of Chief Metropolitan Magistrate, Vijayawada.

A perusal of the record shows that on an application made by the petitioner's son Sri A. Yugandhar, the Bank granted him cash credit facility to the tune of Rs.7 lakhs. For securing repayment of the credit to be availed by her son, the petitioner mortgaged the above described house in favour of the Bank. On account of non-payment of dues by her son, the Bank first issued notices under Section 13(2) and (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security, Interest Act, 2002 (for short 'the Act') and then filed an application under Section 14 of the Act. By an order dated 2-1-2006, Chief Metropolitan Magistrate, Vijayawada issued warrant for taking possession of the house belonging to the petitioner. She then instituted this petition for quashing the proceedings of Criminal Miscellaneous Petition No.6420 of 2005. While issuing notice of the writ petition on 6.1.2006, this Court stayed execution of the warrant issued by the Chief Metropolitan Magistrate on the condition that the petitioner shall deposit a sum of Rs.3.50 lakhs within a period of 14 days with the rider that if the petitioner fails to deposit the amount within the stipulated time, then the Bank shall be free to execute the warrant and take all legally permissible steps for recovery of the amount.

Sri Deepak Battacharjee, learned counsel for respondent No.1 says that the petitioner has not complied with the condition incorporated in order dated 6.1.2006 and, therefore, she should not be given any relief

under Article 226 of the Constitution of India.

Sri Krishna Mohan, learned counsel for petitioner says that due to old age and ill-health, his client could not arrange for payment of Rs.3.50 lakhs. He prayed that the Court may allow some more time to the petitioner to pay the entire balance amount.

Sri Giri Krishna, learned counsel for respondent No.2 for whose benefit the petitioner mortgaged her residential house, says that his client will also make sincere endeavour to repay the amount due to the bank.

In view of the submissions made by the learned counsel for the parties, we do not consider it necessary to examine on merits the petitioner's challenge to the proceedings initiated by the Bank under Part III of the Act and dispose of the main writ petition along with the miscellaneous petition in the following terms:

i) within a period of one month from today, the petitioner shall deposit the balance of Rs.3.50 lakhs, which she was required to deposit in terms of order dated 6.1.2006,

ii) within the aforementioned period of one month, the Bank should communicate to the petitioner the balance amount payable, principal as well as interest,

iii) within next five months, the petitioner shall pay in equated monthly instalments, the amount which would remain payable after making payment in terms of direction No.(i) above,

If the petitioner fails to pay the balance of Rs.3.50 lakhs within one month in terms of direction No.(i) or fails to pay two monthly instalments consecutively in terms of direction No. (iii), the Bank shall become entitled to execute the warrant issued by Chief Metropolitan Magistrate, Vijayawada in Crl.M.P.No.6402 of 2005. In that event, the petitioner and her son shall not be entitled to institute any proceeding in any Civil Court or Debt Recovery Tribunal for stay of the proceedings or any action taken by the bank. The Bank shall also be entitled to take possession of the

property and auction the same for realization of its dues.

G.S. SINGHVI, CJ

3rd July, 2006 **G.V. SEETHAPATHY, J**

vtv/ svs